

1. When were the amendments effective?

The Lacey Act amendments included in the 2008 Farm Bill were effective as of May 22, 2008. As a practical matter, this means that enforcement actions may be taken for any violations committed on or after that date. Note, however, that the requirement to provide a declaration under the amended Act did not become effective until December 15, 2008 (180 days from the date of enactment). Moreover, enforcement of the declaration requirement will be phased-in and initial enforcement for some products will begin April 1, 2009. See http://www.aphis.usda.gov/plant_health/lacey_act/downloads/FederalRegister02-03-2009.pdf for the specific phase-in schedule.

2. What is considered a “plant” under the Lacey Act?

Under the Lacey Act, as amended, “Plant” means: “Any wild member of the plant kingdom, including roots, seeds, parts or product thereof, and including trees from either natural or planted forest stands.” There are some exclusions. Common cultivars (except trees) and common food crops are excluded from the definition of plant. In addition, a scientific specimen of plant genetic material that is to be used only for laboratory or field research and any plant that is to remain planted or to be planted or replanted is also excluded from the definition of plant, unless the plant is listed under the Endangered Species Act or a similar State law, or is listed in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

3. Why does Lacey now cover “any wild member of the plant kingdom” (excluding common food crops and common cultivars)? Are there plant products (other than timber and timber products) where illegal harvest and associated trade is a concern?

Although considerable recent attention has been focused on illegal logging and associated trade, other wild plants also face the threat of illegal harvesting. Prior to the recent amendments, Lacey Act protections covered only endangered plants (such as those listed on appendixes of CITES), and there were prosecutions involving the illegal harvest and associated trade of non-timber plants species such as orchids, ginseng, saguaro cacti, and others.

4. Will regulations be developed?

The Lacey Act amendments include specific provisions for the promulgation of regulations including to define the terms “common food crop” and “common cultivar” and to limit the exclusion of packaging material from the declaration requirements, if warranted. However, most of the statute is self-implementing and thus may be enforced prior to the issuance of any implementing regulations.

5. What is the purpose of the declaration requirement?

Congress did not set forth within the Act an official purpose of the declaration requirement. Declarations generally serve several purposes including but not limited to data acquisition and accountability. Prior to the recent amendments, the Lacey Act already required similar declarations for imports (as well as exports) of wildlife.

6. Where can I find a list of plants prohibited under the Lacey Act?

The Lacey Act pertains to plants (in particular trees) that are illegally harvested. There is no list because the Lacey Act applies to all plants, as defined in the statute (see question #2).

7. Where can I find scientific names for plants?

The following websites may be useful to look-up the scientific names of plants:

- <http://plants.usda.gov>
- http://www.ars-grin.gov/cgi-bin/npgs/html/tax_search.pl
- <http://www.itis.gov/>
- <http://www.ipni.org/>

8. Is there a database of foreign laws that will be enforced as a result of the Lacey Act Amendment?

The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants or that regulates certain plant related offenses. It is the responsibility of the importer to be aware of any foreign laws that may pertain to their merchandise prior to its importation into the United States. Currently, the U.S. Government has no plans to create such a database.

9. Is there a *de minimis* exception?

The statute does not provide for any *de minimis* exceptions, either to the substantive prohibitions or to the declaration requirement. However, the relative amount of an item at issue may be a factor in enforcement as it may go to the issue of knowledge and/or due care. For example, violations of the declaration requirements must be knowing before there is any criminal violation under the statute; there is no due care misdemeanor for violation of the declaration requirement. Where a very small amount of product is found to be in a shipment but not in a declaration, it may indicate a circumstance in which the declaration was not knowingly false, and thus not a criminal violation. And, as with any other customs declaration requirements (e.g., product description, weight, value, etc.) violations, enforcement agencies may exercise discretion on any potential penalties depending upon the severity of the incident.

10. How will affected importers/industries be kept informed about information pertaining to the Lacey Act?

APHIS will continue to provide the latest information regarding the Lacey Act on our Web site, <http://www.aphis.usda.gov>. We also encourage persons interested in receiving timely updates on APHIS's Lacey Act efforts to register for our stakeholder registry at <https://web01.aphis.usda.gov/PPQStakeWeb2.nsf> and select "Lacey Act Declaration" as a topic of interest.